

Zoning Board of Appeals
January 10, 2006
Minutes

Members Present

Barry Silverstein-Chairman
Maureen Kangas-Vice Chairman
Lynne Raver
MaryAnn Leenig
Marc Breimer-Alternate
April Callahan-Alternate

Members Absent

Ronald Critelli

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Edward Peters – Deputy Building Inspector, Interim Zoning Administrator
Christopher Colsey – Director of Municipal Development

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:00 pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Chairman Silverstein announced that Alternate Member Marc Breimer was sitting on the Board for this meeting with full voting rights and that Alternate Member April Callahan would sit on the Board for the Balanced Builders vote only. He advised that MaryAnn Leenig was abstaining from the first two votes due to the fact that she is a neighbor within 500 feet of the applicant.

Chairman Silverstein called for comments or corrections to the minutes of the November 2005 meeting. Hearing none, he called for a motion to accept the minutes as written.

Maureen Kangas made the motion to accept the minutes as written from the November 15, 2005 meeting.

Marc Breimer seconded.

Motion Carried

Chairman Silverstein – Aye
Maureen Kangas – Aye
Lynne Raver – Aye
Marc Breimer – Aye
April Callahan – Aye

Chairman Silverstein announced that for the calendar year 2006, there would be no December meeting.

Vote:

ZB05-013 and ZB05-014, Balanced Builders

Addition on rear of house and a detached garage

Maureen Kangas made the motion to Grant the variances requested

April Callahan seconded

Motion Carried

Chairman Silverstein - Aye
Maureen Kangas – Aye
Lynne Raver – Nay
Marc Breimer – Aye
April Callahan – Aye

Chairman Silverstein thanked April Callahan for the votes. She returned to audience and MaryAnn Leenig took her place on the panel.

Vote:

ZB05-018, Joseph and Jenna Carpenter

Shed

Marc Breimer made the motion to Grant the variance requested

Maureen Kangas seconded

Motion Carried

Chairman Silverstein - Aye
Maureen Kangas – Aye
Lynne Raver – Aye
MaryAnn Leenig - Aye
Marc Breimer – Aye

Old Business

The Chairman called for a motion to accept the new site plans for the Quality Inn Hotel. He advised that the plans changed by approximately two feet but does not alter the variances granted.

Maureen Kangas made the motion to accept the revised plans.

Lynne Raver seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig - Aye

Marc Breimer – Aye

Continued Public Hearing for:

Grid Number: 5953-00-785450 Address: Melzingah Dam Rd

Application Number: ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road.

Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

Chairman Silverstein advised that there are no new communications regarding this appeal. He advised that the Hearing would continue although he was advised that John Andrews, the Town Engineer, who did the review of the original plans and made recommendations, did not receive the revised drawings to review.

Christopher Moschillo, Civil Technologies, presented. He advised that he is the engineer for the Applicants. He presented the Board with the new site plan. He referred to the letter sent by John Andrews and advised that they have addressed the front and side yard issues. The variances are no longer needed. The only variances left are the lot size and the access to the property from other than a main road.

John Andrews, Town Engineer, reminded the Board that in his memo, he cited concerns with the drainage, the layout of the property and the site of the house. The memo was forwarded to Civil Technologies and it is Mr. Andrews understanding that in the process of addressing the comments they looked at the layout of the lot. Civil Technologies, in modifying the footprint of the house, which they intend to build, believe they have addressed the issues regarding the front yard and rear yard, making them conforming. He agreed that the only variances outstanding now are the lot size and not deriving its access over its frontage, but over a private road. Mr. Andrews advised that this information was given via the telephone and he has not seen the actual submittal. He advised that both he and Janis Gomez will need time to review the submittal to verify that the conditions have been met. Chairman Silverstein agreed and advised that the Hearing will be adjourned until the Engineer and Attorney review the plans. This is important, especially if the lot will now be conforming and variances are no longer needed.

Janis GomezAnderson asked Nancy Lecker if she received any correspondences from the Applicant's Attorney. Ms. Lecker replied that she has not.

The Chairman called comments from the Board or the Floor. John Andrews commented that a motion needs to be made to authorize both Janis Gomez and himself to review the new plans and that the Hearing be adjourned and he will commit to the Board to have his comments available in advance of the next available meeting.

Janis GomezAnderson asked Mr. Andrews if he needed both the letter and the plans. Mr. Andrews confirmed that he needs both. He requested that a copy be forwarded to Ms. Lecker and she will forward it to him. Mr. Moschillo advised that he has copies with him if Mr. Andrews would like one now. Mr. Andrews advised that it needs to go through proper channels. Ms. Lecker asked the Chairman if the plans could be presented right now and given to Mr. Andrews and Ms. GomezAnderson. Chairman Silverstein approved. Mr. Moschillo presented the revised plans to Ms. GomezAnderson and Mr. Andrews.

Janis GomezAnderson asked if he had a copy of the letter with him. Mr. Moschillo advised that he did not. Ms. Lecker advised that she will fax a copy of the letter to both Mr. Andrews and Ms. GomezAnderson.

Chairman Silverstein called for a motion to authorize John Andrews and Janis GomezAnderson to review the revised plans and submit comments.

Marc Breimer made the motion to authorize the Town Engineer and ZBA Attorney to review the revised plans and communications and to adjourn the Public Hearing.

Maureen Kangas seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig - Aye

Marc Breimer – Aye

New Business

Appeal Number 1

Grid Number: 6055-19-722215 Address: 526 Washington Ave

Application Number ZB05-019, submitted by Charles Lyons, requesting an 8ft variance to construct a covered front porch, creating a 27ft front yard setback where 35ft is the minimum allowed in an R-20 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein advised that communications were read at the November 15, 2005 meeting. He advised that one neighbor spoke and offered his consent to the project.

Charles Lyons presented to the Board. He advised that he is building a house on Washington Ave and that he would like to build a covered porch across the front of the house. The closest point of the house is 36.5 feet from one corner, then the road curves and the other corner of the house is approximately 44 feet. He doesn't need the eight feet all the way across. He presented the Board with a topography showing his property and the distance from the property line from the two corners and the center. Mr. Lyons presented pictures of some of the houses in the neighborhood.

He advised that his house is approximately 50 feet from the road, but only 36 feet from his property line. Maureen Kangas asked Mr. Lyons which house was his. He presented a picture of his house.

Chairman Silverstein called for additional questions or comments.

Janis GomezAnderson stated that the photographs should have the addresses on them. Mr. Lyons stated that he wasn't sure of the addresses. The houses are located two up and two down from his house.

Chairman Silverstein asked for verification that the variance was for the porch, and the fact that it is covered is only for ascetics. Maureen Kangas asked if the porch alone is ok. My. Lyons stated that he cannot build just a porch. He doesn't have the setback. The Chairman reconfirmed that the variance was for the porch with or without the roof. Mr. Lyons agreed.

Chairman Silverstein called for questions or comments from the Floor. Hearing none, he called for additional questions or comments from the Board. Hearing none, he called for a motion to close the Public Hearing.

The Chairman called for a motion to Close this Public Hearing

Marc Breimer made the motion to Close the Public Hearing

Maureen Kangas seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig - Aye

Marc Breimer – Aye

Chairman Silverstein advised the Floor that the Board will deliberate each case at the end of the Public Hearings and a decision will be made at the next meeting for Hearings that have been closed.

Appeal Number 2

Grid Number: 6356-01-336595 Address: 115 Mountainview Rd

Application Number ZB05-020, submitted by Antonio Scanga, requesting a 31.7ft variance creating an 18.3ft rear yard setback where 50ft is the minimum allowed and a variance from Chapter 150.21 requirement that no more than 10% of a lot can be underwater. Said requests are a violation of Chapters 150-33.A. and 150.21 of the Code of the Town of Fishkill.

Chairman Silverstein read the following communications:

The Dutchess County Department of Planning cited this as a matter of local concern.

Town of Fishkill Planning gave an adverse recommendation. Concerns regarding the floodplain would create a precedent contrary to the intent of the code. The Board also had concerns that construction on this lot may create problems in the future for the residents.

Mitch Berkey, Povall Engineering and John Andrews, Town Engineer presented to the Board. Mr. Berkey advised the Board that Mr. Scanga purchased the lot approximately two years ago.

His Fiancée is from Fishkill and he is from Putnam. They want to stay in this area, and purchased this lot to construct their home. The lot is in a flood prone area. He advised the Board that the property currently has a cottage on it. It is registered as a one bedroom, one bath house. Mr. Berkey stated that he had photos of the cottage. He looked through he file and advised the Board that he did not have them with him. He stated that there is also a well on the site, although he was not sure when the last time it had been used.

Mr. Berkey advised that the lot is approximately two acres and the 100-year floodplain does encompass the entire site, as it does most of the homes in the area along the creek. The property is in a 40,000 sq ft zone. Mr. Berkey stated that they have been working over the last two years with John Andrews, George (McGann), the Health Department, the Highway Superintendent, and the Fire District. The result has been an agreement with most of them. The property has not yet received approval from the Department of Health. The latest review letter had requested more details.

Mr. Berkey described the project. He advised that they were planning to fill a portion of the lot, which will create an island on the property. It will bring the level of the house up to meet Local and Federal FEMA requirements and to comply with the Department of Health's requirements. In doing so, they are proposing grading improvements. The improvements will still channel the water as it does now. He pointed to the drawings and stated that the water flows down a road and hits the creek and goes around an area of the property. Mr. Berkey stated that they are not proposing to cut off the flow of the water or divert the water onto other properties.

Mr. Berkey advised the Board that the rear yard setback variance requested is based on dry land. The actual setback to the house is approximately eighty to eighty-one feet. The cottage is currently in the rear yard of the property. He stated that it was his opinion that there isn't any negative impact with the location of the home.

Chairman Silverstein commented that it's obvious that the site is flooded now or floods. Mr. Berkey stated that it is in the 100-year floodplain. The Chairman stated that it does get more. Mr. Berkey agreed. The Chairman asked if the water goes in particular directions, what will happen to the water once the house is built. John Andrews requested permission to answer the question. Chairman Silverstein acknowledged him. Mr. Andrews stated that there is a defined flood study for this location. The stream is located here. It is the Sprout Creek. It is near the confluences with the Fishkill Creek and being in an area where two major streams come together, the property gets a lot of water. The stream flow is in a direction towards the road. The stream is shown on the flood insurance rating maps. Since it is part of a defined study, there is additional information regarding it and also includes a floodway with it. The floodway is an area of extreme flood hazard which most of the floodwaters are carried into. This area is so big that the fill that is being proposed doesn't have an impact on the flood elevation. By placing their fill on this end of the lot, they won't push any additional water onto the road or their neighbor's lot. What they have affectively done, was to create an island in the floodway. The elevation that this floods to, according to the studies, is elevation 225. Currently the elevation of the road is at 222. The road gets three feet of water. During the flood last October, the fire department moved the people out in boats. The elevation of the bridge area is 220; it will get almost five feet. What the Applicant is proposing will not materially affect it. This amount of fill is so minimal that both the Building Inspector and Mr. Andrews found there to be no impact on the overall flood. The issue as to whether the water will be pushed onto a neighbor's lot isn't going to happen. Water seeks its own elevation. The issue that is of concern to both the Building Department and to Mr. Andrews is that the proposal creates an island. How will anyone get to it in an emergency? Mr. Andrews reiterated that he and Mr. Berkey have been working on this project for nearly two years. What he

currently has is in general compliance with Town Code Chapter 78, which is the flood hazard ordinance. He has followed that code. He has also been to the Fire Department and the Highway Department. The response that they gave him was that people do live in the area now, and when it floods, they get them out and there is no substantial damage to their homes. One additional house will not make a difference to either department. It would just mean one or two additional people in a boat. That was the basic answer given to Mr. Berkey.

Marc Briemer commented that the Rombout Fire Department doesn't have a boat.

Mr. Berkey stated that the new home will create a refuge for the other residents. Mr. Andrews stated that the lot will be high and dry. There were some issues regarding the use of the house and the existing structure, but they have been solved. This fact of the matter is that the Applicant is creating an island in the floodplain and the Highway and Fire Departments stated that it is something that they can deal with. Chairman Silverstein stated that he would like to see the comments in writing. Mr. Andrews agreed. The Chairman stated that he is not comfortable dealing with an area, which already has problems and volunteers have to be sent in to help other people and to add to the strain of a fire department that is straining to have more volunteers. He commented that his statement isn't right or wrong, only that he is not comfortable not seeing it in writing that they are willing to do this.

The Chairman questioned the use of the house in the rear of the property. Mr. Berkey stated that it will be retained as a shed. Mr. Andrews commented that any permit issued for this property will be noted that the current structure cannot be used as a residential structure. It may only be used as a storage area or the understanding was that it is a perfect set up for use as a workshop.

Marc Briemer questioned the floodplain study. He advised Mr. Andrews that the flood insurance rate map that he has is dated 1984. Mr. Andrews stated that there have been no updates. He advised that FEMA is starting an update process. Most of the original studies were very conservative to the point of over estimating the floodplains elevations. What has been found in the Town of Fishkill is that the actual elevations are more important than the aerial extent. If you look at the elevations, they tend to track better. As an example, the recent flooding the Village of Fishkill, pretty much tracked the elevation not necessarily the aerial extent that is shown on the map. Mr. Briemer stated that he is concerned that this is a river network that extends through numerous municipalities. Some have larger extents of development and he is concerned with how this will tie in.

Maureen Kangas commented that someone needs to study this. Mr. Berkey stated that they did have a flood study, as part of another project, approximately one mile upstream from the property. The result was that it was lower in elevation than what was shown by FEMA.

Marc Briemer advised that he is familiar with the property. He stated that he was there evacuating the Scanga's future neighbors that night and throughout the course of the weekend. He would be interested in seeing the official report from the fire department regarding this issue. While it is possible to get people out of the area the next question is that when a disaster strikes, it seems to hit a number of things at the same time. He would like to be assured, in writing, regarding the safety of the residents of that house. While they are on an island, it would be a shame if the island was burning.

Chairman Silverstein commented that he is also concerned that there is no septic approval yet. Mr. Berkey stated that he understood. He advised that the plans were resubmitted in September with minor comments. Mr. Andrews commented that what had been done, in consultation with

the Building Inspector, was to have a plan of action. It started with the Department of Health for the water supply and the wastewater disposal system, which is required. The Fire Department had asked for a dry hydrant. The Applicants are willing to provide that. They will be required to get a DEC permit for it and they are willing to get it. The next thing would be that the ZBA would have to grant the variances, if you see fit to, and then the Building Inspector would be in a position to issue a floodplain development permit and subsequent building permit with certain conditions.

Mr. Andrews stated that from a technical standpoint in terms with the Town's Flood Hazard Ordinance, they have done what the ordinance requires of them. What is missing from Mr. Andrews point is the approval from the Department of Health. He has had some lengthy discussions and his opinion is very similar with Mr. Berkey's that the Department of Health will grant it.

Chairman Silverstein called for comments from the Floor.

John Hupe, Mountainview Rd, clarified that the building currently on the property is a one-room cottage. He stated that he has been a resident for fifty years and that there is no well or septic on the property. There is a driven point on the site, but no well. He also stated that there is no electricity on the property. He believed that there had been at one time, but was disconnected when it was deemed not to be used as a residence. His first concern regards the issue of the floodplain vs. the floodway. The actual floodway for this property happens to flow between the easterly side of the property and Mr. Hupe's property. He pointed to the site map and stated that the creek actually backs up and floods further upstream. The bank is high by the property and the water backs up by the railroad trestle and flows by the eastern side of the property, which is exactly where the proposed septic system will be placed. Then it flows back to the south and out through the area where the proposed driveway will be placed. Mr. Hupe presented pictures to the Board. He advised that his house remained dry during the last flood because his elevation is much higher. He is concerned that by elevating the Applicant's site with fill, the water that currently flows over it will be displaced, flow onto his property, and exacerbate the floodway. He passed the pictures and explained to the Board that he has four sets of pictures to view. The 100-year floodplain has been mentioned. The first three pictures are floods from 1999 and then he has pictures from January, March and October of 2005. Two sets of pictures show the property completely under water. The other two show between sixty and seventy percent underwater. Some of the pictures show the road and the cottage. He pointed to a picture with his wife in an orange coat looking out from the cottage over the proposed driveway, which is in the floodway area.

Mr. Hupe presented the Board with an aerial of the site, and pointed out his property, the cottage, and how the floodwaters flow. He stated this area floods and the "point", or what may be depicted as a well on the drawings, floods and will reach a depth of 3½ to 4 feet. The flooding in the floodway is anywhere between two and three feet deep. There are also pictures of the bridge. The water was actually over the steel grating of the bridge in October.

Mr. Hupe reiterated his concerns of the displacement of the water and further exacerbating, or creating, a problem for his property and potential problems with his septic system and well and, if the water got up far enough, water in his basement. He also stated a concern that if an island was created, the only way to reach it will be in a boat. There have been several times in the last few years that this property has been under water. It is a relatively consistent occurrence and happens at all times of the year.

Marc Briemer stated that since the FEMA study was done, our region has experienced a tremendous amount of development. A large amount of the development has been in the area of the Fishkill Creek water shed. His concern is that, although the estimates may have been conservative, there has been a serious encroachment into the floodway and floodplains north of Fishkill and down into the City of Beacon. Seeing regular flooding, the re-engineering of the area may be insignificant compared to the volume of the entire river system, he has begun to see the accumulative effect of development throughout the area. It may be having an effect that he is not able to determine from the data produced in 1984.

Mr. Briemer stated that he would be interested in seeing if there have been any larger studies or post-studies done. Unfortunately, from the recent disaster in October on Mountainview Rd, FEMA is not, at this point, giving any assistance. He stated that he is very concerned over this.

Joe Carpenter stated that he agreed with what has been said. There are current residents and we need to give the area a break and work on the problems and keep everybody high and dry. He doesn't want to lose what he has and he hopes that at some point the residents of the area can have a meeting and work something out.

Richard Peck, Mountainview Rd, stated that he is the neighbor across the street. He presented additional photos to the Board showing his house. He pointed out where the proposed driveway will be located. He indicated how deep the water gets in his driveway and that there is a strong current. He pointed to his house, showing the floodwater, and stated that he has a four foot foundation. He showed pictures of his pool and what was left of it after the water receded. Additional pictures showed his shed, with water approximately five feet deep, and how the current damaged it and tore the doors.

Joe Carpenter stated that he is also concerned with the septic system. If the land is raised, it will come directly into his yard. Chairman Silverstein stated that it is the one area that the ZBA has no control over. The septic system is strictly controlled by the Department of Health. The Chairman stated that the ZBA will not take any action on this variance until the Board of Health gives its approval.

Mr. Carpenter asked if the fill for the site will come from the property itself or will it be brought from another location. The floodways currently crosses his driveway. Creating an island may push the floodway.

Chairman Silverstein stated that he misinterpreted the Town Engineer earlier. He thought that the island had already been built when they were actually speaking in future terms. What they are stating is that the area is currently so poor, that even after the island is built to resolve their problem, there is so much water that it will not displace it any differently and affect any of the neighbors. In other words, the island will protect whatever they decide to build and there will be no negative impact on the surrounding properties.

Mr. Andrews clarified for the Board that the term "Floodway" has a strict definition under the law as shown on the maps. What the water actually does on this property may be at a slight variance with that. The floodway is properly shown on this. It may not tell you where the current goes, but the Town Code is written on the technical end. Chairman Silverstein commented that the Town Engineer has to go with the legal end. Mr. Andrews reiterated that the residents need to understand that there are subtle differences. This is a macroscopic study and when you get to individual properties, the water may behave differently.

Mr. Carpenter advised the Board that the Sprout Creek has additional water flowing into it. The development on All Angels Hill Rd and Old Hopewell Rd is a very large development. They knocked down several trees and built a catch basin across from the Kingdom Hall. That flooded into the road and they did some more work on it and diverted the water across the street into the corn field. That corn field is a low point that leads directly into Sprout Creek. All of the additional water from that development project runs directly into Sprout Creek and subsequently his front yard.

Marc Breimer agreed stating that there has been twenty years of development along the Creeks.

Jean Krause, Mountainview Rd, stated that the requirement is that ten percent or less of flooding on the property. We are looking at a property that floods ninety to one hundred percent. The Applicant is looking to create an island. She commented that Mr. Povall stated that this is a young couple looking to come up here and (pointing to Marc Breimer) stated that he knows what it was like to come up there and try to get people out. Now you are talking about a young family, and young children and animals. The flood waters were so high that the residents were not able to get across the bridge to check on their neighbors. Ms. Krause stated that her question is how the Town perceives the idea approving this or something on a larger scale. If this is approved, then it will have to be reviewed for others.

Elizabeth Russo, Hopewell Junction, stated that she lives on the other side of the creek. She stated that she is concerned that if the Applicant builds up, that the rear of the property will have additional flooding. As it comes over, the property behind her will flood and then her house. In agreement with what had already been said, she stated that the last flood moved her pool from the rear of her property to the front of it. Ms. Russo stated that Mr. Breimer was at her house at 2:00am to rescue her, her two children and their dog. It is a concern for her because she knows of someone whose house shifted. The residents worry about flood waters. She advised that purchased her house in 1997. Since she purchased her home, she has left at least six times due to floods. It is far more than 100 years. In the last flood she had three feet of water in her home. She asked if this home is built can the stream be made deeper to avoid the flooding. There has to be a way that if they are going to live there, that it will not affect the surrounding houses.

Maureen Kangas and MaryAnn Leenig both stated that they are very concerned with the response from the Board of Health and the septic system.

Ms. Krause stated that she is also concerned about the septic system. When the area floods out, the rear of her property becomes the middle of the stream. Then it travels through the Peck's property, back over the road and then backs up onto her property again. Ms. Krause questioned if the Applicant raises the land, where will all that drainage go and where will the septic go? Will it be level with the road or below ground?

George Hupe, Mountaiview Rd, stated that he has lived there since 1952 and that his house is higher up a hill. He advised the Board that he can substantiate the claims regarding the flooding. It happens every year. Another thing that happens is that the Sprout Creek comes down and then you have Fishkill Creek and all of the land is low. There is a collision. The Sprout Creek backs up further. It isn't able to drain as quickly as if it were a stream by itself, because the Fishkill Creek has this lower area already flooded.

Julia Scanga, the Applicant's mother, stated that her son would live in the cottage that is already on the property, but it isn't the right place to settle down and have a wife and children. He would prefer to situate himself in a more desirable location. In doing so, he isn't just thinking about

himself. The concerns expressed by the neighbors are valid with the exception of John Hupe. He has the same elevation that her son wants to create. Their fill will not affect his property, as the Town Engineer and their Engineer have already explained. The amount of fill that has been brought in is so minimal that the displacement will not occur.

Chairman Silverstein requested clarification regarding the statements made about the amount of fill that has been brought in. Is she referring to the amount of fill that is intended to be brought in. He stated that he had a problem with this earlier. Ms. Scanga confirmed that it is the amount to be brought in. She stated that the intended fill will be at the same elevation as John Hupe's property.

Ms. Scanga commented on the pictures presented. She stated that she has not seen them and she doesn't know when they were taken or the validity of them. The neighbors are in a lower lying area and their property will flood whether this house is built or not.

Ms. Scanga stated that when the fire department comes in their boats to get the residents out, where do they go if the whole area is flooded. By creating this island, and not meaning an island with water around it at all times, only when the area is flooded, when the area does flood and the neighbors have no place to go, this island will create a safe haven for them.

Ms. Scanga commented on the remarks made regarding the septic system. She advised that they have resolved some of the issues and that they meet all of their requirements. Chairman Silverstein advised that she may be correct, but until she has the approval, it's not even up for discussion.

MaryAnn Leenig asked when they purchased the property. Ms. Scanga stated that it was two years ago. She also stated that she has been to the property after some heavy rains and flooding, and has never seen the property flooded. She commented that she may not have been there at the right time. Ms. Leenig agreed that she hasn't because Mr. Breimer is a fireman and has been there. The Chairman also stated that the property floods. Ms. Scanga stated that it does flood in the lower area in the buffer zone by the creek. The Chairman reiterated that the property does flood, otherwise she would not be bringing in fill to create an island. Ms. Scanga also reiterated that they are bringing in the fill to bring the elevation to the same level as the neighbor.

Ms. Scanga continued and advised that in 1988 George Hupe gave his son, John Hupe, a piece of land to build his house. George Hupe made his son's dream come true. His dream to build his house and stay here and live next to his family. Ms. Scanga stated that she is asking the Board Members and the neighbors not to steal a young man's dream. He has a piece of land and wants to build a home and raise a family and become a productive member of the community, maybe even a volunteer fire fighter.

John Hupe raised his hand to speak. Chairman Silverstein stated that he did not want to get into rebuttals regarding the comments made. Mr. Hupe stated that he had only a few additional comments, although a few will be rebuttals.

Mr. Hupe stated that the home that he lives in was not "given" to him in 1988. It was built in 1987. He stated that there was a very emotional dissertation given. Chairman Silverstein stopped him and stated that the ZBA does not deal with emotions, it deals with the law. Mr. Hupe requested to talk about the facts. He stated that when Mr. Scanga first looked at the property two years ago, he met him and advised him that the property flooded. He also spoke with the realtor after speaking with other prospective buyers had discovered that the realtor had not been advising that the property flooded. Mr. Hupe commented that this property was purchased with the full

knowledge that it flooded. He understands the desire to build a home and start a family, but he bought a piece of property that goes underwater.

Mr. Hupe reiterated that the flood maps show it, he personally told Mr. Scanga that the property floods, yet the decision was made to purchase the property. Mr. Hupe admitted that it was not up to him or anyone else to decide if Mr. Scanga wants it, because he wants creek front property. He did state that the Town has a responsibility to decide if they want to put another family in the situation that the neighbors are already in, albeit not by their choice. As Mr. Breimer had mentioned, there has been a lot of development in the area. He reminded the Board that he has lived there for fifty years and has seen the problem get worse every year. Going back fifteen years, there was never flooding like this, and now it happens every year. It happens a couple of times a years and not a little bit of water, a lot of water. To look at maps and engineering decisions based on what the old flood maps show, the evidence that was presented here tonight shows what has been happening in the last twelve months on that piece of property. Personally, he doesn't believe that doing this and stating that adding fill to this property won't make the problem worse. We don't have any control over what happens upstream, but we do have some control over what goes on here.

Garrett Martin, Mountainview Rd, stated that he is the third house down from the property. He also shares the same concerns regarding the water and what will happen to it if they put in this fill.

Antonio Scanga, spoke to the Board. He stated that his, hopefully, future neighbors seem like decent people. He commented that he spoke with Mr. Hupe when he was looking at the property. Mr. Scanga stated he made it a strict point to his engineer that he did not want to effect the neighbors in any way in the event of a flood. He was assured by his engineer that the fill being brought in will not effect any of the surrounding properties, that it is insignificant to the whole floodplain. Mr. Scanga stated that he is not a big developer, he is just a young guy and doesn't have the funds to buy anything else. He would love to be a part of the neighborhood and is willing to do everything possible to meet all of the codes and to make sure that nobody is effected by what he does to this portion of the property.

Chairman Silverstein called for additional questions or comments from the Board.

Janis GomezAnderson stated that she divided the square feet under water by the minimum lot area of the property and she was coming up with 88% not the 78% listed. She wasn't sure if she make a mistake, but wants the figure checked. Mitch Berkey stated that it may the lot requirement. This is an R-40 and he believes that the lot requirement is 30,000 sq ft, but he will check into it. He asked Ms. GomezAnderson if she was using the 30,000 sq ft or the total lot of 1.95 acres. Ms. GomezAnderson state that she was dividing the 74,000 sq ft underwater by the 84,000 sq ft. Mr. Berkey stated that he would look into it.

Chairman Silverstein asked the Board if they wanted to adjourn this. Janis GomezAnderson asked if they wanted to see the Department of Health's approval. The Chairman confirmed that they did. Ms. GomezAnderson stated that the Hearing should be adjourned to a date uncertain until they have the approvals. She asked Ms. Lecker if she published the agenda in the newspaper. Ms. Lecker stated that is isn't the full agenda, but that all of the Hearings are listed. John Andrews commented that there are two ways to adjourn it. It can be adjourned to a date certain at which time all those in attendance tonight know when it will be reopened. You can also adjourn it to a date uncertain. You will have to re-notice the Public Hearing in the newspaper. Mr. Andrews' recommendation to the Board was to adjourn it to the next meeting, a date certain, and if the

applicant fails to provide the necessary documentation, they will continue to be adjourned to another date certain. It may be inconvenient, but it seems to be the fairest way, and nobody misses.

Marc Breimer stated that he would get the fire department's comments. The Chairman commented that the septic will also need to be addressed.

Chairman Silverstein called for a motion to Adjourn this Public Hearing.

Maureen Kangas made the motion to Adjourn the Public Hearing

MaryAnn Leenig seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Appeal Number 3

Application Number ZB06-001, submitted by Kevin Moen, requesting a 1ft variance to build an addition onto a single family dwelling that currently has a 14ft pre-existing non-conforming side yard setback where 15ft is the minimum allowed in an R-15 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read a communication from the Dutchess County Planning Department citing this as a matter of local concern.

Kevin Moen, Applicant, presented to the Board. He advised that he has a single-family residence on Park Lane. He stated that he is requesting a one foot variance to construct an addition to his house that currently has a 14 ft non-conforming setback. At the time he purchased his home, he was single and his son visited on the weekends. He has since remarried and needs the additional space to expand his family. The house is a small, L-shaped, two-bedroom, one-bath house, and is approximately 800 sq ft. Mr. Moen stated that he plans to square out the house in order to increase the size of one of the bedrooms and to install two bathrooms. The house will become approximately 1,100 sq ft but will not encroach any further into the existing side yard setback.

Mr. Moen advised the Board that they currently use both bedrooms to store their clothes and dressers because the bedroom is not large enough to have the dressers and a queen bed. They would like to use one bedroom for themselves and the other to extend their family. He advised that they do not have many options, and that they are not able to put a second floor onto the house. They looked into adding onto the other side of the house, but that would entail reconfiguring the house including relocating the kitchen, which is not an option.

Chairman Silverstein verified that the addition would be ok except for the one foot setback. Mr. Moen confirmed this. He stated the house is currently 14 feet and the minimum is 15 feet.

Maureen Kangas stated that she can see it on the plans. She stated that it makes sense, a growing family needs more room and it is not infringing on the neighbors.

Chairman Silverstein called for questions or comments from the floor. Hearing none, he called for a motion to close the Public Hearing.

Marc Breimer made the motion to Close the Public Hearing

Maureen Kangas seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Appeal Number 4

Application Number ZB06-002, submitted by Mark Medley, requesting an 11ft variance creating a 14ft side yard setback, where 25ft is the minimum allowed in an R-40 Zoning District to build an attached garage.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the DC Planning Department and the NYS Thruway Authority both citing this as a matter of local concern.

Mark and Michelle Medley, the Applicants, presented to the Board. He advised that the lot has a single family home on it. He also owns the adjacent property at 227 Bedford Lane. Their house was built in 2002 but the builder went bankrupt and they were unable to finish their garage. They are now in a position to complete the garage and they submitted their plans to the Town. The suggestion from the Town was to move the garage back further due to the fact that it would encroach into the side setback. Mr. Medley advised that if the garage was moved back further, it would impede on their well, which runs out the corner of the house. They would have to build right on top of it. They do not have the finances to move the well or reroute it. They prefer to leave the garage as originally planned, although they will need a variance to do it.

Maureen Kangas asked if the garage will be place on the side with their other property. Mr. Medley stated that it will go on the right side of their house. Ms. Kangas asked for verification that the right side is adjacent to the other property they own. Mr. Medley confirmed that it was.

Michelle Medley advised the Board that when they subdivided their property, the lot line was placed on an angle. If they move the garage forward and even with the house, they will go over the line and onto their other property.

Ms. Kangas asked what the property was like. Was it trees? Mr. Medley stated that the area is clear. It was cleared when they built their house. It was one piece of land that was subdivided in 1999. Having a lack of knowledge of surveys, when the new house was placed on the map, they weren't asked if they wanted to place their new home further down. They were told that this was where the house would be placed and these were the setbacks.

Janis GomezAnderson pointed to the survey and asked if this was the location of the septic. Mr. Medley confirmed that it was. Ms. GomezAnderson specified that verification was needed since the survey stated "proposed" on it. Mr. Medley stated that the entire left side of the house was the septic.

A member of the audience asked the Chairman if he could view the plans. Chairman Silverstein said yes and advised the gentleman that he would also be allowed to comment on it.

Ms. GomezAnderson asked how big the lot was. Mr. Medley advised that the entire lot was 2.7 acres. He stated he didn't know the exact figure, but each lot was over one acre. Ms. GomezAnderson asked if the second lot was a buildable lot. Mr. Medley stated that it already has a house on it. He advised that it was their original home. They subdivided their lot in 1999 in order to build their new home.

MaryAnn Leenig asked if it had been sold to someone. Mr. Medley advised that it had not. Ms. Leenig asked if they considered whether or not they may have trouble selling if the garage is that close. Mr. Medley stated that it should not effect it since there is some open land and the original house actually sits further back.

Ms. Leenig questioned whether the Applicants would rather consider moving the lot line to get more land. Ms. GomezAnderson stated that it would be a lot line adjustment instead of a variance. Ms. GomezAnderson and Ms. Leenig agreed that they were not sure how the Town handles lot line adjustments. Chairman Silverstein asked if John Andrews was still in the building. Ms. GomezAnderson asked Ed Peters if it had to be a subdivision or can it be a lot line adjustment. Mr. Peters stated that he was not sure. The Chairman stated that they have done it in the past. Ms. Leenig advised that it would still give them an acre to sell the property with a house on it. Ms. GomezAnderson stated that it was just a question of which was the better way to go.

Chairman Silverstein stated that the Hearing can be adjourned while the Applicants investigate their options. He advised them that it would delay them another thirty day and he didn't know if there was a sense of urgency on this.

Ms. GomezAnderson stated that the Public Hearing could be closed. Under the law the Board must vote on the application within 62 days. For February it wouldn't matter but typically the next ZBA meeting falls on the 63rd day, so the vote would have to be at the February meeting. The Applicants can consent to extend that time. She advised the Applicants that they have two choices. They can close the Hearing tonight and see what you can find out before the next meeting. If it is discovered that it isn't an option for you, the Board can vote at the February meeting. If it is an option and you are still investigating it, you can consent to extend the time for the Board to vote.

Mrs. Medley verified that if the new line was approved, then they would not need the variance. The Chairman agreed. Ms. GomezAnderson stated that the Applicants would need to find out whether it would be an additional cost to them. Maureen Kangas stated that it would be worth the investigation. MaryAnn Leenig commented especially if they want to sell the property in the future.

Mrs. Medley asked for verification that otherwise they would be able to hear the decision in February regarding the variance without the lot line. Maureen Kangas confirmed this. Mrs. Medley stated that it was fine with her. Ms. GomezAnderson stated that the Applicants had to understand that the ZBA can not vote on the variance if they are still investigating the lot line. It needs to be one or the other. She stated that it may be discovered that it isn't an option in which case the Board can vote on the variance in February. If you find out that it is an option, then the Applicants can make the decision to proceed with the variance or the lot line.

Maureen Kangas stated that it may be more costly to the Applicants, but in the long run it may be better. Ms. GomezAnderson stated that the Applicants can appear before the Board next month and advise them.

Ms. GomezAnderson asked if the Applicants have a survey for their other lot. Mr. Medley stated that they did. He was going to bring it, but thought that it was already on file at Town Hall. Nancy Lecker advised that she would check the build files and see and, if there was no survey, she would contact the Medleys to bring one.

Ken Niebuhr stated that he is an adjacent neighbor and that he doesn't have any problem with it.

Chairman Silverstein called for a motion to Close or Adjourn this Public Hearing

Maureen Kangas made the motion to Close the Public Hearing

MaryAnn Leenig seconded

Motion Carried

Chairman Silverstein - Aye

Maureen Kangas – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Deliberations

ZB05-010, Gianna, Melzingah Rd

No discussion

ZB05-019, Lyons, Porch

No Discussion

ZB05-020, Scanga, Mountainview Rd

Chairman Silverstein commented that the discussion should be tabled until they get additional information regarding it. He feels that there will need to be a lot of documentation because it is his belief that if an island is built that the water will be diverted. If it is not going to be diverted he needs the proof.

Maureen Kangas stated that it is a very serious and passionate problem. She felt that they need everything in line regarding it, including the Department of Health.

Lynne Raver asked why he would buy it. The Chairman commented that he may have purchased it when it was dry and probably at a tax sale. Maureen Kangas stated that he may have been given misinformation.

MaryAnn Leenig asked what John stated. Maureen Kangas responded that he (John Hupe) spoke with the real estate agent not to the buyers directly. Ms. Leenig corrected herself and stated John Andrews. Chairman Silverstein commented that you need to read between the lines. The Chairman restated that Mr. Andrews' comment was that based on the legal interpretation of the flood plan, it's not going to effect it that much, but the reality of the way things have changed in the water runs, for all he knows it could add another twenty feet. The Chairman advised that Mr.

Andrews could not comment on that. He made it clear not to say that what he said from the “legal” engineering term of the water, to the reality of what actually happens.

Maureen Kangas commented that it is correct. They say 10% and the residents are right when they say 80-90%. It’s not 10% and she feel that it is getting worse every year.

Janis GomezAnderson commented on the 78% covered. She advised that Mitch Berkey will double check his figures but when she divided the two numbers, she got 88% covered. The other concern is regarding the application. It is a request for a 68% variance. If it is 78%, they are subtracting 10% from the 78%. 10% is allowed but they are asking for 78%. The Chairman agreed. He stated that going from 10% to 15% maybe, but 10% to 78%?

Ed Peters asked if he was allowed to comment. The Chairman agreed. Mr. Peters stated that he grew up in this area and the creek is getting very excessive. Both the Chairman and Maureen Kangas agreed. Ms. Kangas stated that something has to be done.

Marc Breimer stated that no one has done any studies in the last twenty years regarding what the Fishkill Creek is doing. If you look at the amount of impervious pavement north and west of us, most of it is being channeled into the creek. Now look at what is happening with Toll Brothers and Wal-Mart. It’s causing flooded surfaces and the channels can’t handle it anymore.

Mr. Peters stated that it was a very good point that the over development hasn’t been looked at.

MaryAnn Leenig commented that the neighbors had told him it flooded. Maureen Kangas stated that with all of the construction going on, to buy a piece of land like that is unimaginable. The Chairman stated that someone may have told him that if enough fill was brought in a house could be built to such a point that, even though everyone else around you will be flooded, you will be relatively safe, and the cost for the fill would be minimal compared to the cost of buying an acre somewhere else.

The Chairman stated that he had difficulty each time that Mrs. Scanga referred to the area, stating basically that the neighbors are already flooded, so it doesn’t really matter what they do. He stated that if he had been one of the neighbors, he would have resented the remark. Ms. Leenig agreed with the statement. The Chairman stated that was one of the reasons that he held back on the public’s comments. He didn’t want to get into a debate. Ms. Leenig stated that the one comment made in rebuttal was well spoken. He didn’t go back at her. He approached it nicely.

Marc Breimer referred to the area variance criteria item regarding if the proposed variance will have an adverse effect or physical impact or environmental conditions in the neighborhood. His concern is that, as a community, we know that the flooding conditions exist and aside from building levies or installing pumps, the only thing that we can mitigate is the hazard to the community by restricting development in the floodplains. Chairman Silverstein agreed. He stated that you can’t build an island and then state that the water is not going to affect the people to the left and right of you. Maureen Kangas also agreed and commented that the Applicant’s are stating that the water will run in a particular direction. They can’t make that kind of statement. MaryAnn Leenig agreed stating that nobody knows where the water is going to run. Chairman Silverstein remarked that the Applicant’s were basically stating the neighbors already get three feet of water, so what’s three and a half feet.

Chairman Silverstein stated that they would wait to see if they get a septic system. He feels that they will get it. MaryAnn Leenig and Lynne Raver agreed.

ZB06-001 Moen, Park Lane

Chairman Silverstein stated that he does not have a problem with the one-foot variance. MaryAnn Leenig agreed.

ZB006-002, Medley, Bedford Lane

Chairman Silverstein advised that this project is on hold. He commented that the Applicant made a good argument as to why he couldn't move the garage. Ms. Leenig stated that the map given was an old one. Janis GomezAnderson commented that the map stated, "proposed septic". Ms. Leenig thought that if he can move the lot line, it would make more sense. It would be easier for him to sell the other property, which is still an acre. Ms. GomezAnderson stated that it would give him more room on his property.

Chairman Silverstein called for any additional business. Hearing none, he called for a motion to Adjourn the ZBA Meeting.

Maureen Kanges made the motion to Adjourn the ZBA Meeting
MaryAnn Leenig seconded
Motion Carried

Meeting Adjourned at 8:46 pm

Respectfully submitted
Nancy Fitzgerald-Lecker
ZBA Clerk